

The Honorable Ricardo S. Martinez
Noted on Motion Calendar: 1/25/2008

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MICROSOFT CORPORATION, a Washington corporation,) No. CV07 936RSM
Plaintiff,) **IMMERSION CORPORATION'S**
v.) **MOTION TO FILE UNDER SEAL**
IMMERSION CORPORATION, a Delaware corporation,) **CERTAIN SUPPORTING DOCUMENTS**
Defendant.)

Pursuant to Local Rule 5(g) and Rule 26(c)(1) of the Federal Rules of Civil Procedure (“Rule 26(c)”), defendant Immersion Corporation (“Immersion”) respectfully requests that the Court allow it to file under seal exhibits 1, 4, 7, and 8 to the Declaration of Jofrey M. McWilliam in Support of Immersion’s Opposition to Microsoft Corporation’s (“Microsoft”) Motion to Disqualify Irell & Manella LLP (“McWilliam Declaration”).

To date, the parties have produced documents in this action with the understanding that documents designated “Confidential” will be protected from disclosure pursuant to a Protective Order that ultimately will be entered in this action. The parties have exchanged drafts of a protective order and expect to submit a form of order for the Court’s review and approval. The parties are now in the process of finalizing the protective order.

IMMERSION CORPORATION'S MOTION TO FILE UNDER SEAL
CERTAIN SUPPORTING DOCUMENTS (CV07 936RSM) - 1

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1 Notwithstanding that a protective order has yet to be entered in this action, Immersion
2 respectfully submits that there is “good cause” that the documents set forth above be filed under
3 seal. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (a “good
4 cause” showing under Rule 26(c) will suffice to keep sealed discovery documents attached to
5 non-dispositive motions because “the usual presumption of the public’s right of access” is
6 rebutted for non-dispositive motions where “the public has less of a need for access to court
7 records”). The above-referenced exhibits to the McWilliam Declaration contain business
8 sensitive and confidential information, including information related to the scope of a sublicense
9 to Immersion’s haptic technologies granted by Immersion to Microsoft in 2003 (Exhibit 1),
10 correspondence during the negotiations between Immersion and Microsoft in 2003 relating to the
11 resolution of Immersion’s patent lawsuit against Microsoft—which Microsoft has designated as
12 “Confidential” pursuant to the pending protective order (Exhibits 7 and 8), and confidential
13 financial terms of an agreement between Immersion and Sony Computer Entertainment, Inc., and
14 Sony Computer Entertainment America, Inc. (the “Sony Agreement”) (Exhibit 4).¹ The subject
15 exhibits have each been designated “Confidential” pursuant to the pending Protective Order.
16 Sealing of these documents is proper under Local Rule 5(g) and Rule 26(c) because the public’s
17 interest in accessing such information is minimal or nonexistent, while the interests of the parties
18 and relevant non-parties in protecting these documents from public disclosure is substantial.
19 None of these exhibits to the pending non-dispositive motion deals with any specific matters of
20 public importance. Further, information relating to the parties’ claims is already available from
21 Microsoft’s Motion to Disqualify Irell & Manella LLP, Immersion’s Opposition thereto, as well
22 as other pleadings and documents on file with the Court.

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25 ¹ This Court has already ordered that Microsoft’s original complaint in this case, which Microsoft initially
improperly filed publicly, be sealed because it contained sensitive financial terms of the Sony Agreement.
26 Microsoft has also moved to seal copies of the Sony Agreement (and a draft of the Sony Agreement) and the
Sublicense Agreement that it filed as Exhibits B, K, and M to the Declaration of Blake Marks-Dias in Support of
Plaintiff’s Motion to Disqualify Irell & Manella LLP.

1 In view of the foregoing, Immersion respectfully requests that this Court enter an order
2 sealing the above-described documents. A proposed order is lodged herewith.
3
4

DATED January 22, 2008.

5 BYRNES & KELLER LLP
6

7 By /s/ Jofrey M. McWilliam
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1
2 **CERTIFICATE OF SERVICE**
3
4

5 The undersigned attorney certifies that on the 22nd day of January, 2008, I electronically
6 filed the foregoing with the Clerk of the Court using the CM/ECF system which will send
7 notification of such filing to the following:
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